

REMARKS

Claims 1-10, 20-26, and 30-33 are currently pending in the present application.

Applicants summarize the history of the present application as follows:

In a first Restriction Requirement dated August 8, 2005, the Examiner divided the filed Claims 1-33 into four groups of claims under 35 U.S.C. § 121. Specifically, the Examiner indicated that Groups II, III, and IV are related to Group I as subcombination/combination claims. In particular, the Examiner broke down the group of claims as follows:

Group I: Claims 1-6, 10-18, 20-24, and 29-31

Group II: Claims 7, 8, 25, and 32

Group III: Claims 9, 10, 26, and 33

Group IV: Claims 19, 27, and 28

In response to the first restriction requirement, Applicants, in an Amendment that was mailed on November 7, 2005, amended and canceled certain claims, and respectfully submitted that the restriction requirement by the Examiner became moot in view of the amendments. In response, the Examiner, in an Office Action dated January 17, 2006, issued a second restriction requirement, indicating that the Applicants failed to elect one of the originally grouping of claims.

Applicants on February 8, 2006 submitted a response to the second restriction requirement, respectfully submitting that the currently pending claims, as amended by the previous response, made moot the first restriction requirement issued by the Examiner, or at the very least requires a revised restriction requirement by the Examiner.

The Examiner, in the current outstanding Office Action, has issued a new restriction requirement of combination/subcombination of the following order:

Group I: Claims 1-6, 20-24, and 30-31 (drawn to a digital mixer with an engine and console)

Group II: Claims 7, 8, 25, and 32 (drawn to an engine for a digital mixer)

Group III: Claims 9, 10, 26, and 33 (drawn to a console for a digital mixer)¹

In response, Applicants provisionally elect, with traverse, Group I (Claims 1-6, 20-24, and 30-31) for further prosecution.

Applicants respectfully submit that the Examiner's restriction requirement via combination/subcombination distinctness is improper in this instance. Specifically, as the Examiner noted, a restriction under combination/subcombination is proper only when it can be shown that a combination as claimed (A) does not require the particulars of the subcombination as claimed for patentability, and (B) the subcombination can be shown to have utility either by itself or in another materially different combination (M.P.E.P. 806.05(c)).

In this instance, the claims identified in Groups II and III above cannot be considered a subcombination having utility either by itself or in another materially different combination. Rather, per the Amendments dated November 7, 2005 and January 17, 2006, the claims of Groups II and III are dependent from independent claims identified in Group I, and are all accordingly directed to a digital mixer. Claims 7, 8, 25, and 32 are not directed to an engine, as the Examiner identified; nor, are Claims 9, 10, 26, and 33 drawn to a console, as the Examiner identified. Rather, Claims 7-10 and 25-33 are simply dependent claims that further limit the scope of the independent claims. More importantly, Claims 7-10 and 25-33 are directed to the same combination identified in their

¹ Applicants note that the Examiner, in the Detailed Action, at page 4, references Invention IV. Applicants believe this is in error at the Examiner identified only three inventions I-III.

respective independent claims. Indeed, as stated in the M.P.E.P., any claim to a combination AB_{sp} should be grouped with combination AB_{br} (M.P.E.P. § 806.05(c)(II)(B)).

In view of the above, Applicants respectfully submit that the restriction requirement is improper, and request that the Examiner withdraw the restriction requirement and further prosecute all of the pending claims.

If it would further advance the prosecution of the present application, Applicants request the Examiner to contact the undersigned attorney at (213) 892-5587 to discuss any steps necessary to place the application in condition for allowance.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant(s) petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. 393032029900.

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Respectfully submitted,

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